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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL DIVISION

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MARY SERFASS, ROXANNE M. RICHARDSON	:	CASE NO. 02CV2747
LISA J.STANTON and WILLIAM S. STANTON	:	
Plaintiffs	:	Defendant's Response
	:	to Motion To Remand
VS.	:	
	:	
JAMES A. MORELL	:	

**DEFENDANT'S RESPONSE TO MOTION TO REMAND  
TO THE COURT OF COMMON PLEAS OF  
NORTHAMPTON COUNTY, PENNSYLVANIA**

Defendant hereby responds to Plaintiffs' Motion To Remand to The Court of Common Pleas of Northampton County, Pennsylvania, and in support thereof allege and aver the following:

1. ADMITTED.
2. ADMITTED.
3. ADMITTED.
4. SPECIFICALLY DENIED. It is SPECIFICALLY DENIED that the Plaintiffs properly served the complaint on the Defendant, Dr. James A. Morell. **The Writ of Summons was not re-issued pursuant to Pa. R.C.P. 401 (b) (2) and (5), and the Complaint is not alternative original process because the court**

**record clearly evidences the complaint was served without conformance to Pa. R.C.P. 400 and Pa. R.C.P. 401 (a) and (b) (5).** In specific, the Pennsylvania Court of Common Pleas requires a re-instated writ of summons as a legal foundation for proper service of a complaint.

5. ADMITTED.
6. ADMITTED. However, this is a de minimus clerical error, the title and section should read Title 28 U.S.C. § 1332 at paragraph ten (10) of the Notice of Removal. That is, the original jurisdiction stems from diversity as pled in paragraphs seven (7) and eight (8) of the Notice of Removal and reinforced by paragraph ten (10), which should read Title 28 U.S.C. § 1332, not 1331. The Defendant, Dr. James A. Morell, only pleads Notice of Removal by and through Diversity of Citizenship, with the amount in controversy exceeding \$100,000.00.
7. ADMITTED.
8. SPECIFICALLY DENIED. It is SPECIFICALLY DENIED the Defendant, Dr. James A. Morell, **ever** received proper service of process with a complaint in conformance to Pa. R.C.P. 400 and Pa. R.C.P. 401, which would legally trigger the requirement of a responsive action by Dr. James A. Morell. Further, see Pa. R.C.P. 401 (b) (5), Note: If the applicable time has passed after the issuance of the writ or filing of the complaint, **the writ must be reissued or the complaint reinstated to be effective as process.**
9. SPECIFICALLY DENIED. It is SPECIFICALLY DENIED the Defendant failed to timely give Notice of Removal. Title 28 U.S.C. § 1446 (b) is interpreted by the federal courts to require that “proper service (of the initial pleading) is a

prerequisite to commencement of removal period.” See *Murphy Brothers, Inc., Petitioner v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 119 S. Ct. 1322, 143 L. Ed. 2d 448, 1999 U.S. LEXIS 2346; and, *Baratt v. Phoenix Mut. Life Ins. Co.*, 787 F.Supp. 333, at 336 (WDNY 1992). The Plaintiffs have **NOT** provided original process in conjunction with a properly served complaint pursuant to Pa. R.C.P. 401(a) and (b) (2) through (5).

10. ADMITTED. Although as a matter of law, the Defendant, Dr. James a. Morell, argues the remand should not be granted.

WHEREFORE, the Defendant, Dr. James A. Morell, respectfully requests the Honorable Court deny the Motion To Remand and order the matter to proceed in the United States District Court For The Eastern District of Pennsylvania, Civil Division.

Dated: Friday, 21 June 2002

Respectfully Submitted,

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George A. Gallenthin, Esq.  
Attorney for Defendant

CERTIFICATE OF SERVICE

I, George A Gallenthin, Esq., hereby certify that on Monday, 24 June 2002, I did serve a true and correct copy of the foregoing Response to Motion To Remand with Brief, on Robert E. Sletvold, Esq., LAUER & SLETVOLD, P.C., 701 Washington Street, Easton, Pa. 18042, attorney for plaintiffs in the above-entitled action, by causing same to be placed in the United States mail, First Class, Postage Pre-paid and addressed to Robert E. Sletvold, Esq., LAUER & SLETVOLD, P.C., 701 Washington Street, Easton, Pa. 18042.

Dated: Monday, 24 June 2002

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